IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 311 OF 2005

Shri Vikas Seth ... Petitioner

V/s

Shri Arun Kumar Jain & Anr. ... Respondents

None for petitioner

Shri D.P. Adsule, APP for the State.

Coram : V.M. Kanade, J.

Dated : 01/04/2005.

P.C. :-

. This is an application for quashing the process issued by the Additional Chief Metropolitan, 28th Court,Esplanade, Mumbai on the complaint filed by the respndent No.1 under section 138 read with section 141 of Negotiable Instruments Act.

. It is submitted on behalf of the petitioner that there is no averment in the complaint that the present petitioner is responsible for day to day affairs of the respndent No.1 company. It is further submitted that the petitioner has resigned as Director with effect from 27/03/2003 and is not responsible for day to day affairs of the respondent No.1 company. It is submitted that he was appointed as non-executive Director for a particular project. It is further submitted that the petitioner has not signed the cheque on 27/03/2003.

. It is, therefore, submitted that issuance of

process is liable to be quashed. It is not possible to accept the contention as pleaded in the complaint. In para-1 of the complaint it is specifically averred that accused Nos. 2 to 5 have issued the cheque in the capacity as Director of the accused No.1. In para-2 of the complaint, there are also averments in which the name of the present petitioner is specifically mentioned. In my view, the contentions raised by the petitioner cannot be accepted as these are the questions which cannot be decided at this stage. All the question raised by the petitioner are kept open and the same shall be decided by the Magistrate after evidence is adduced.It is further made clear that petitioner is exempted from appearing in the trial court. The plea of the petitioner shall be recorded through his advocate.The petitioner however shall remain present in the trial court at the time of recording his statement under section 313. With these directions, criminal application is disposed of.

(V.M. Kanade, J.)